

# Tennessee State Board of Accountancy

## MEETING MINUTES

April 25, 2008

The meeting of the Tennessee State Board of Accountancy convened in the Davy Crockett Tower, Nashville, Tennessee on Friday, July 25, 2008, at 8:30 am.

Board members present: Vic Alexander, chairman; Stanley Sawyer, vice-chairman; William Underwood, secretary; William Blaufuss, Jennifer Brundige, Alfred Creswell, Teresa Jeter-McAvoy, Lisa Stickel, and Douglas Warren.

Board members absent: Kenneth Cozart, CPA and Shannone Raybon, Attorney-at Law.

Also present: Mark Crocker, executive director; Michael Driver, attorney; Daniel Syriac and Mary Flagg, accountancy administrative staff members; Brad Floyd, TSCPA executive director; Wendy Garvin, TSCPA member services manager; and members of Commerce and Insurance legal department.

Chairman Alexander opened the meeting and presented the following announcements. Douglas Warren was appointed incoming chairman of the Board of Examiners. Lisa Stickel will serve on a committee for NASBA. Alfred Creswell, Teresa Jeter-McAvoy and Chairman Alexander received reappointment certificates from the Governor.

The April board meeting minutes was presented with no corrections or changes. Mr. Warren made a motion to approve the minutes. Mr. Underwood seconded the motion. Motion was unanimously approved.

Chairman Alexander asked Mr. Crocker to present the Executive Director's Report. Mr. Crocker welcomed everyone and confirmed the absence of board members Kenneth Cozart and Shannone Raybon. The outlay for attending the NASBA annual meeting in Boston, Massachusetts, October 26-29 for the executive director and three board members was figured in this fiscal year's budget. Attendance is encouraged from the Executive Director by all board members that would like to attend any NASBA meeting. If more than three (3) board members desire attending any NASBA meeting, please notify my Mr. Crocker.

Mr. Crocker is a member of the Accounting Licensing Database Task force will attend their meeting scheduled on August 18, 2008. A report will be presented at the Board's October meeting.

The CPE auditing process is near completion; approximately 860 audit requests were mailed, 632 have been completed with only 13 of the completed audits deficient. Forty-three (43) audit reports received have not been processed and 146 licensees have not responded to the request for audit reports. Second notices will be mailed to licensees that have not responded by August 1, 2008.

The Accountancy Board's new office location in the Andrew Johnson Tower is still in the organizing stage. Needed shelving for the file room was ordered so that Firm files can be removed from boxes and permanently located on shelves.

The meeting date proposed for April 24<sup>th</sup>, 2009 conflicted with the Music City Marathon. May 1, 2009 was confirmed as the new date since there were no scheduling problems for any members voiced.

Our database is populated with approximately 3800 licensees whose CPA or Firm registrations have expired. Beginning July 28<sup>th</sup>, letters will go out requesting that their wall certificates be returned or that the reinstatement process begin. It was noted that these letters requesting the return of wall certificates could prompt phone calls to Board Members for answers to questions that may arise.

Mr. Crocker asked attorney Michael Driver, to report on the transfer of the Peer Review program. Mr. Driver advised that the transfer involved a two step process. The first step required the Board to agree to discontinue its Peer Review program (step one was completed at the April, 2008 board meeting). Step two required the Board to ask for approval from Finance and Administration to enter a non-competitive, no-cost contract with the TSCPA. Step two of the process has been initiated and results will be reported at the October meeting.

Ms. Jeter McAvoy ask if Mr. Crocker had a report on the status of hiring an Investigator for the Accountancy Board. Mr. Crocker informed the Board that due to the current budget issues with the State. A freeze was placed on hiring for all Departments. Mr. Crocker circulated a unfreeze hiring memo through the proper channels about two weeks ago so that hiring an Investigator can be finalized. To date, there has been no response to his memo. Chairman Alexander discussed this matter with the Assistant Commissioner who promised that if there is still no response by July 28, 2008; Mr. Majchrzak would place a phone call to the Commissioner's office for a status finding of this request. There being no further questions or discussions the Executive Director's report was concluded.

Next on the agenda was the report on the Board of Examiners presented by Douglas Warren. Mr. Warren informed the Board that the since the Securities and Exchange Commission approved the CPA exam for use by public companies, the most compelling

issue being discussed involves the exam. Facts from the International Reporting Standards showed that, 40% of candidates who sat for the exam in 2006 (using the computerized method) passed indicating a 10% increase over the number of successful candidates using the paper based exam. However, it was pointed out that the higher passed rate does not mean there are more CPA's but that candidates are just more successful.

Mr. Warren stated that Globalization begin as a request from NASBA to take the CPA exam outside the United States so that candidates could sit for the exam in other countries. Issues evolving from this request center on whether or not a license should be issued to the successful candidate and who should issue the license? It was realized that when candidates not residing in the United States passed the exam taken in the United States, a letter from NASBA stating that the candidate has passed was used as a CPA license to secure jobs and promotions. Another question for discussion arose, if the exam is taken outside the United States, would then a larger number of successful candidates begin using this letter as a CPA license? A task force comprised of NASBA and the BOE are discussing the possibility of whether or not a license should be granted outside the United States; and if present laws even allow issuing a license outside the United States? NASBA contends that only State boards can issue a license. The inception of Globalization has stimulated discussion on topics such as; revenue gained by states that allow foreign candidates to sit in their state, increase in exam fees, and who will get to claim the International territory. Mr. Warren offered a closing forewarning that State Boards will be asked to enter these discussions when talking in terms of Globalization. This concluded Mr. Warren's report on the Board of Examiners.

Next item on the agenda was the NASBA Regional Meeting presented by Lisa Stickel. Ms. Stickel thanked the Board for the opportunity to attend the NASBA Regional meeting. She expressed attending this meeting was a great means to become proactive in NASBA interest that will benefit the Board. Ms. Stickel also urged new board members to attend NASBA meetings for the educational content but also as a useful networking tool. This was the conclusion of Ms. Stickel's report on the NASBA Regional Meeting.

The next agenda item was the Committee Reports. Michael Driver, board attorney presented the Probable Cause report. Mr. Driver began by stating that a tentative settlement had been reached on the Formal Hearing that was scheduled for 9am today. This was the matter of a second offense failure to obtain a peer review. The Board had previously authorized a \$2500 civil penalty. The Respondent agreed to pay the civil penalty, hearing and investigatory costs, obtain two (2) hours of continuing professional education, and complete the peer review. The Respondent also agreed that her license will be on probation until the end of this year. If other violations occur during the probation period, the Respondent's license will be revoked. Mr. Driver recommended that the Board approve the Consent Order to resolve this matter. Motion was made by Mr. Sawyer to approve the

Consent Order, seconded by Mr. Creswell. With no further discussion the Board approved the Consent Order. The Probable Cause report was continued listing eight (8) complaints with recommendations to the Board. The recommendations follow: Civil Penalties Assessed; 3, Amount of Penalties; \$12,500.00, Letters of Warning; 1, Consent Orders for Surrender or Revocation; 1, Closed; 1, Dismiss; 1, Defer; 1. Motion was made by Mr. Underwood to approve the Probable Cause report and seconded by Ms. Jeter-McAvoy. All responded yes except Mr. Blaufuss who recused from voting on Complaint #4 but responded yes to all other complaints listed. The Probable Cause report was approved.

The next item on the agenda was the report from the Finance and Administration Committee presented by Stanley Sawyer. Mr. Sawyer reported that the F & A committee discussed; Independence, Budget Review, Reinstatement Appeal, and review of the SWOT analysis. The committee elected to defer the report on Independence to the Independence Task Force with exception of one item involving the reserve fund balance. Approval of 2008-2009 Fiscal Budget is recommended by the Committee. It was pointed out that aspects of the cost for the Board to hire its own attorney was omitted from the Fiscal Budget anticipating inclusion of this topic in the report on Independence. The committee further seeks approval of the Travel Budget that will allow travel by the Executive Director, Board members, and/or their designated replacements. It was reported that a Capitol Budget will be presented at the October Board meeting by Executive Director Crocker addressing the capitol needs of the Accountancy Department. The F & A committee report was temporarily ended because the scheduled time to begin a Formal Hearing had arrived.

### **Formal Hearing**

Judge Tom Stovall, Administrative Judge (appointed by the Secretary of State) opened the Formal Hearing of the Tennessee State Board of Accountancy in the matter of Wanda J. Smithson, CPA license No.12160 and Firm registration No. 1127 as a result of the Notice of Hearing and Charges filed on April 7, 2008. Decisions or merits of this case will be made by members of the Accountancy Board. However, Judge Stovall will make all rulings of the evidence law and procedure by the authority granted him by the Tennessee Administrative Procedures Act. Judge Stovall ask all Board members present to identify themselves as a mater of record. Members of the Board were reminded that their decisions must be based only on the record produced today through the procedures of this matter otherwise results of this case could be reversed or remanded back to the Board for further consideration. It was determined that Board members had not communicated with Ms. Smithson nor did they have any reason they can not serve on the case. The record will show Michael Driver, Commerce and Insurance staff attorney will represent the State of Tennessee in this matter. The record will further show that Ms. Smithson was not present nor was an attorney present to represent Ms. Smithson. The record will consist of all Notices, Orders, Motions, Statements and Exhibits filed or stated pertaining to this case.

Motion was made by attorney Driver to find Ms. Smithson in default. Mr. Driver introduced a certified mail return receipt as Exhibit #1. Judge Stovall found as a matter of Law Ms. Smithson had received proper notice and could be held in default. Judge Stovall advised the Board of their right to find Ms. Smithson in default and proceed without her presence or the Board could continue the case and give Ms. Smithson a chance to appear at another date. Chairman Alexander asks the Board if there was a motion to find Ms. Smithson in default. Mr. Underwood made a motion to find Ms. Smithson in default, seconded by Mr. Sawyer. Without discussion the Board unanimously approved the motion to find Ms. Smithson in default. Judge Stovall directed Mr. Driver to give each Board Member a copy of the Notice of Hearing and Charges. Following a brief recessed to review the charges, Chairman Alexander recused from participating in the voting and discussions involved in this matter and appointed Mr. Warren to direct the Board during the hearing.

At the conclusion of Mr. Driver's opening statement, Mark Crocker a sworn witness was called for testimony. During the course of Mr. Crocker's testimony Exhibit #2 (an affidavit confirming Ms. Smithson performed attest services) and Exhibit #3 (financial statements prepared by Ms. Smithson) were introduced into the record. There being no other witnesses called, Mr. Driver continued with his closing statement. Attorney Driver recommended the Board revoke Ms. Smithson's CPA license and firm registration due to non-compliance of peer review requirements and non-compliance of licensure requirements.

A Charge from Judge Stovall reminded the Board that charges are not proof but rather an indication of a violation. Violations must be specifically articulated. If a violation of the Practice Act is determined the Board is authorized by 62-1-111 to revoke a license.

**The first order of deliberations was to adopt the finding of allegations as fact.** Terry McAvoy moved to accept the Allegations of Fact as correct listed in items 1-7 of the Order. List Stickel seconded the motion. Without discussion the Board approved.

Mr. Warren asked, based on testimony heard, is there an action to accept the **Alleged Conclusions of Law as listed**? Terri McAvoy made a motion to accept the Alleged Conclusions of Law identified in items 1-4 of the Order as correct. William Underwood seconded the motion. No discussion followed. Board approved.

Mr. Warren offered a **Statement of Violations** as follows; Respondent practiced without a license, operated a Firm without a firm registration, and failed to obtain the required peer review. Mr. Warren ask the Board if they accept the Statement of Violations? Ms. Jeter-McAvoy moved to accept the Statement of Violations. Mr. Underwood seconded. Without discussion the Board approved.

In conclusion, Mr. Warren stated, the Board of Accountancy is charged with the

responsibility of protecting the general public in the State of Tennessee by assuring that individuals who work in the profession of accountancy are competent and qualified to do so. It has been found that Ms. Smithson violated the law and rules in place for the purpose of fulfilling our mission. What is the pleasure of the Board? Ms. Jeter-McAvoy moved to revoke the CPA license and firm registration of the Respondent in this matter. Ms. Stickel seconded. Without further discussion, Board approved. Mr. Underwood made a motion to access a civil penalty of \$1000 and additionally access the hearing and investigatory cost of this case. Ms. Jeter-McAvoy seconded. Board approved.

Judge Stovall said the Hearing was adjourned.

### **Continued F & A Report.**

Mr. Sawyer reported that the Fiscal Budget had been corrected to reflect the money used for Tongate's salary and legal expenses was replaced. Mr. Sawyer asked for a motion to approve the 2008-2009 Fiscal Budget. Mr. Underwood made a motion to approve the 2008-2009 Fiscal Budget. Motion was seconded by Ms. Lisa Stickel. No further discussion. Board approved. Mr. Sawyer made a motion to approve the Travel Plan because it is separate form the Fiscal Budget. Mr. Underwood seconded the motion. With no opposition or discussions, the Board approved the Travel Plan.

Chairman Alexander asked for a motion concerning the recommendation to seek opinion from the Attorney General regarding, 62-1-121 (d) Fund of the state of board of accountancy and 62-1-105 (c) hiring professional staff. Ms. Jeter-McAvoy made a motion to seek opinion from the Attorney General for a definition of the word professional cited in 62-1-105, does this refer to CPA's only and to further clarify how the new law will affects the accountancy fund balance. Does the new law superseded 62-1-121 (d)? The motion was seconded by Mr. Underwood. With no further discussion, Board approved.

Review of the SWOT analysis prompted a motion from Mr. Warren to move the SWOT analysis into action. Seconded by Ms. Stickel. Without opposition, the Board approved. This concluded the report from the F & A committee.

The next agenda item was the report from the Licensing Committee. This report was presented by Ms. Terri Jeter-McAvoy. The committee denied a Tennessee Exempt Organization application from the Growth Coach seeking to become a CPE provider with a recommendation to apply through NASBA. The Committee is asking the Board to approve the form designed that will be used formalize the application process of Tennessee State Specific Ethics providers. A State Specific Ethics course from Deloitte was approved. The Committee is seeking approval of a policy statement that will allow the Executive Director authority to send applications for Tennessee State Specific 1-Hour Ethics courses to committee members for tentatively approve prior to board meetings. This will allow timing

to get applications approved before they are formally introduced to the Board. The Committee is researching the best course of action regarding licensees that do not respond to the Board audit request. The Committee approved NASBA to begin printing Wall Certificates for CPA's as long as this action is not prohibitive to licensees. The Committee approved a candidate's request for an extension of 18 months time due to being deployed to active military duty. The Committee seeks approval for a policy that states CPA candidates deployed to active military duty will be granted an extension of time that will equal the number of months of active duty. A total of eighty-two (82) initial applications were received with twenty-two (22) being reciprocal. Twenty-one (21) applications were audited with no exceptions. The Committee made a formal request to the Board to add an agenda item that will allow the staff attorney to discuss a section of the law and rules during Board meetings to foster understanding among board members. The report from the Licensing Committee was concluded. Following discussions, Chairman Alexander ask for a motion to accept the Committee's report and authorize the actions they are seeking. Lisa Stickel so moved and Mr. Warren seconded. Without further discussion the motion was approved by the Board.

The Peer Review Committee report presented by Mr. Blaufuss is the next agenda item. Mr. Blaufuss stated that there was a discussion on the objectives of the Committee with agreement to explore opportunities to better serve the Board in fulfilling the Peer Review Committee function. It was noted that further assistance from the Board staff, TSCPA, and NASBA was needed to clarify the Committee's oversight agenda regardless of who performs the mandated peer reviews. The Peer Review statistics reveal 454 reviews are due in 2008. The Board has a August 31 deadline for reporting and the TSCPA has a December 31 deadline to report peer reviews. One hundred thirty-eight (138) reports have been completed and accepted. The Committee granted two (2) practitioners exemption from the Peer Review reporting requirement because they have provided attest services during the time required. The report was concluded. Mr. Blaufuss moved for approved of the Peer Review Committee Report. Motion was seconded by Mr. Alexander. Without discussion, the Board approved the motion.

The next agenda item was the Executive Committee report presented by Vic Alexander. The Committee recommended deleting policy #4 Interstate Practice of Accounting form the Policy Statement due to the Mobility Law. Mr. Sawyer made a motion to delete item #4 from the Policy Statement. Ms. Jeter-McAvoy seconded the motion. No discussion followed, the Board approved the motion. Executive Director, Crocker and Board Members; Warren and Stickel will be attend the NASBA meeting in Boston on October 26-29. The Crowe Chizek name change issue has been resolved without any action on the part of the Board. Status of the Investigator position was discussed in the Executive Director's report. The Committee agreed that action on the Reserve Fund will be discussed during the report on Independence. The contract for Jim Michie a member of the Peer

Review Oversight Committee will expire September 30, 2008. The Committee is seeking two (2) board members to review application and resumes for this position. Mr. Sawyer and Mr. Blaufuss volunteered to carry out this responsibility. Committee member, Mark Crocker stated that Conflict of Interest forms will be signed every January according to Department policy. There being no further discussions or items presented for approval. The Executive Committee Report was concluded.

### **Old Business**

The report on Independence was presented by Terri Jeter-McAvoy. A copy of the report on Independence was given to each board member detailing the findings of the research, surveys, and meetings involved in this work. Reasons for autonomy were given and well as a history of the Board that lead to this point. The course of action to pursue this endeavor is outlined in the report that was passed out. The recommendation from Ms. Jeter-McAvoy based on advice and information received follows. Ms. Jeter- McAvoy offered, that in view of the Budget crisis in State Government this is not a good time to introduce a Bill for Independence. Mr. Warren moved to accept the report and recommendation from Ms. Jeter-McAvoy. Mr. Underwood seconded the motion. With no opposition, the Board approved the motion.

### **New Business**

A document seeking the acceptance of CPA's from Ireland to practice in Tennessee a Professional Mutual Recognition Agreement was passed out by Mr. Crocker, who asked that board members review this information a be prepared to discuss at the October meeting.

Ms. Jeter-McAvoy introduced a motion asking the Board to approve looking into CPE tracking. Mr. Sawyer seconded the motion. Without opposition, the Board approved.

Ms. Jeter-McAvoy ask the Board to approve the Executive Director and a Board Member attend TSCPA Council Meetings.

Ms. Jeter-McAvoy noted that a discussion on dues was needed. It was asked that this topic be put the agenda of the May, 2009 meeting.

No further business was discussed.

The meeting was adjourned.

Approved by \_\_\_\_\_

Chairman

\_\_\_\_\_

Secretary